



Commonwealth  
of Massachusetts

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*www.state.ma.us/ocpf*  
*Office of Campaign and Political Finance*  
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*Boston, MA 02108*

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***Advisory Opinion***

August 16, 1999  
AO-99-13

Michael W. Hennessy  
9 Stevens Street  
Methuen, MA 01844

Re: Contribution from Fire Fighter's Union

Dear Mr. Hennessy:

This letter is in response to your July 29, 1999 letter requesting an advisory opinion regarding the legality of Methuen Fire Fighters individually or their affiliated union, Local 1691 of the International Association of Fire Fighters, making contributions to your campaign.

Facts: You have stated that there are 96 members of the Methuen Fire Department (the "Department") including 1 chief, 4 deputy chiefs, 2 captains, 17 lieutenants and 72 fire fighters. Each shift consists of a deputy chief, 4 lieutenants and 18 fire fighters. As a lieutenant in the Department you directly manage 10 fire fighters on your shift.

You have also stated that the Methuen Fire Fighters are affiliated with Local 1691 of the International Association of Fire Fighters. With the exception of the chief, Local 1691 is the sole bargaining unit for the membership. Under the charter and by-laws of Local 1691, any member in good standing may be elected as president, vice-president, secretary or treasurer in October of each year regardless of the member's rank within the Department.

You are a candidate for councillor-at-large in Methuen. At a recent regularly scheduled union meeting a motion was made and seconded from the floor to authorize Local 1691 to contribute \$1000 to your campaign. The motion was accepted by the President and passed unanimously. You did not vote and were not present at the meeting.

Based upon these facts you have asked two questions.

Question: May fire fighters on shifts that are not under your command contribute to your campaign?

Answer: No.

Question: May Local 1691 contribute to your campaign?

Answer: Yes. For the purpose of this opinion, I assume you have or will have organized a political committee on your behalf pursuant to M.G.L. c. 55, s. 5 prior to your committee's soliciting or receiving any contributions on behalf of your campaign.

Discussion:

As a lieutenant in the Department, you are an appointed "person employed for compensation . . . by the commonwealth or any county, city or town" or public employee subject to the provisions of section 13 of the campaign finance law, M.G.L. c. 55. Public employees may run for public office. See AO-93-16 and AO-88-24. In general, public employees may also contribute to candidates and elected officials. See IB-92-01. Public employees may not, however, directly or indirectly, solicit or receive contributions for their own campaign or for any other political purpose. For this reason, a public employee who intends to raise campaign funds must first organize a political committee. See AO-93-16.

The second sentence of section 13 also provides, in relevant part, that a committee organized on behalf of a public employee may not solicit or receive contributions from:

any person or combination of persons if [the public employee] knows or has reason to know that the person or combination of persons has an interest in any particular matter in which [the public employee] *participates* or has participated in the course of such employment or which is the subject of his *official responsibility*.

The campaign finance law does not define the terms "participates" or "official responsibility." Section 13's second sentence, however, is a conflict-of-interest provision and the identical terms are defined by M.G.L. c. 268A. "Official responsibility" is defined, in part, as "the direct administrative or operating authority . . . to approve, disapprove or otherwise direct agency action." Similarly, "participate" means to "participate in agency action or in a particular matter personally and substantially as a[n]. . . employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

Consistent with these definitions, this office has advised that a public employee may not solicit contributions from public employees who are supervised by the public employee. See AO-89-31. In light of your position, it is possible, if not likely, that you would have a significant portion, if not all, of the 72 fire fighters in the Department assigned to your shift at some time. In addition, as one of 17 lieutenants, you would appear to have some administrative or operating authority to "approve, disapprove or otherwise direct agency action" or would be likely to "participate" in matters involving some or all of the 72 fire fighters. For example, you might recommend that a fire fighter receive a promotion or commendation or you may direct fire fighters at the scene of a fire.

Therefore, although you may directly manage only 10 fire fighters on your shift at any one time, your political committee should not solicit or receive contributions from any of the 72 fire fighters who report to you or other lieutenants in the Department. Absent unusual circumstances, however, section 13 would not prohibit your political committee from receiving contributions from your colleagues or

superiors, i.e. the department's lieutenants, captains, deputy chiefs or chief.

Although fire fighters that you supervise are members of Local 1691, the union itself is a separate and distinct entity. Moreover, the campaign finance law expressly recognizes that associations such as unions may make political contributions. See M.G.L. c. 55, ss. 7, 18 and 22. See also IB-88-01 and AO-94-28.

In AO-88-22, this office advised that a political committee organized on behalf of a fire fighter could solicit and receive a contribution from the local union. Even though the fire fighter held numerous positions in the union, the office concluded that "these positions do not appear to be part of [his] official duties as a Fire Fighter." The person asking for advice was not in a supervisory position. Therefore, the opinion concluded that the committee organized on behalf of the Fire Fighter could not only receive contributions from the union but also could receive contributions from other Fire Fighters. Contrast AO-88-16 concluding that an officer of the State Office of Employee Relations may not solicit contributions from public labor union over which the public employee exercises supervisory responsibility. A political committee organized on your behalf could, therefore, receive contributions from the union consistent with section 13's second sentence.<sup>1</sup>

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan" followed by a horizontal line.

Michael J. Sullivan  
Director

Enclosure (IB-88-01)

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<sup>1</sup> A union may make a contribution without any further obligations if the contribution, combined with all other contributions, is considered "incidental." Contributions are incidental as long as the aggregate of all contributions made in one calendar year do not exceed the lesser of \$15,000 or ten percent of the union's prior year's gross proceeds, i.e. dues and other income. See IB-88-01 (a copy is enclosed for reference.)